

Appl. No. 10/725,248
Docket No. P145
Amdt. dated December 5, 2007
Reply to Examiner's Answer mailed on October 5, 2007
Customer No. 27752

REMARKS

Claim Status

Claims 1 – 53 are pending in the present application. No additional claims fee is believed to be due. Claims 13 and 24 – 53 have been previously withdrawn. The Examiner's Answer mailed on October 5, 2007 contains a New Ground Of Rejection. This is a Request to Reopen Prosecution.

Rejection Under 35 U.S.C. § 112, Second Paragraph

The Examiner's Answer states that the rejection of claims 1 – 12 and 14 – 23 under 35 U.S.C. § 112, Second Paragraph has been withdrawn.

Rejection Under 35 U.S.C. § 102 Over Farag

The Examiner's Answer states that the rejection of claims 1, 2, 6 – 9, 14, 15 and 18 – 21 under 35 U.S.C. § 102 as being anticipated by Farag, et al. (US Patent No. 4,241,093)(“Farang”) has been withdrawn.

Rejection Under 35 U.S.C. § 102 Over Suzuki

Claims 1 – 5 and 14 – 17 have been rejected under 35 U.S.C. § 102 as being anticipated by Suzuki, et al. (US Publication No. 2002/0054923)(“Suzuki”). Applicants respectfully traverse this rejection.

Suzuki is directed to:

An agent for preventing, improving or treating hypertension, which exhibits a hypotensive effect, inhibits the rise of blood pressure and improves hypertension, and food for preventing or improving hypertension, which does not become a burden in daily intake, has a higher antihypertensive effect and is useful as a diet during treatment for patients of hypertension.

Abstract. Suzuki, however, fails to teach each and every element of the claims.

Suzuki fails to teach a composition adapted for use by a companion animal. As defined by the current application, “companion animal” means a domestic animal.

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Preferably, 'companion animal' means a domestic dog, cat, rabbit, ferret, horse, cow, or the like." Page 3, lines 15 – 16. The Office is attempting to place "human" within the supplied meaning of "companion animal" by stating that the "use of the phrase 'and the like' in defining 'companion animal' extends the definition to include humans, and therefore, [Applicants] composition for companion animals is merely an intended use, does not create a structural difference between the claimed composition and the cited composition, and thus is not limiting." Extending the definition to include "human," however, would be inconsistent with the specification. During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries, Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999).

As noted, the current application provides an explicit definition of "companion animal." Additionally, the written description provides that a consumer includes "companion animal guardian, breeder, veterinarian, or the like" and the consumer "will readily comprehend benefits of the present composition." Page 10, lines 19 – 21. The specification also provides that "the term 'orally administering' with respect to the companion animal means that the animal ingests or a human is directed to feed, or does feed, the animal one or more compositions herein." Page 11, lines 31 – 33. Non-limiting examples have, therefore, been provided as to the roles humans may play in the lives of companion animals. As such, it would be inconsistent with the specification to extend the definition of a "companion animal" to include a human. As Suzuki fails to teach each and every element of the claims, Suzuki cannot be said to anticipate the claims. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 102 Over Cheuk

Claims 1, 2, 4 – 12, 14, 15, and 18 – 23 have been rejected under 35 U.S.C. § 102 as being anticipated by Cheuk, et al. (US Publication No. 2003/0099759)("Cheuk"). Applicants respectfully traverse this rejection.

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Cheuk is directed to:

[a] canine pet food composition comprising a meat based material having an essentially solid mass assuming the shape of the container in which it is packed, said pet food having meat particles with a moisturized appearance and visually recognizable discrete food particles upon slicing the pet food mass after departure from the solid container.

Abstract. Cheuk, however, fails to teach each and every element of the claims.

Cheuk discloses a "meat based material having an essentially solid mass assuming the shape of the container in which it is packed..." The composition has "...visually recognizable discrete meat particles with a moisturized appearance upon slicing the pet food mass after the departure from the said container." Para [0003]. Cheuk, however, fails to teach a liquid composition.

The claims of the current application state that "the composition is a liquid..." The specification defines "liquid" as follows:

The compositions herein are liquids; as used herein, the term "liquid" is as will be commonly understood in the art, with the understanding that the composition may contain solid particulates or other solid matter while still maintaining the overall liquid character of the compositions. Liquids are typically flowable at ambient temperature.

Page 7, lines 1 – 5. Cheuk fails to teach a liquid composition. Cheuk specifically states "[t]he final mixture is filled into cans, which are then sealed and sterilized. In this case, the product produced a solid mass with recognizable discrete meat particles with a moisturized appearance." Para [0049]. Cheuk, therefore, teaches a solid mass and not a liquid composition. As Cheuk fails to teach each and every element of the claims, Cheuk cannot be said to anticipate the claims. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 103(a) Over Farag in view of Food, 2705 and 66

The Examiner's Answer has included the following New Ground of Rejection. Claims 1, 2, 6 – 9, 14, 15, and 18 – 21 have been rejected under 35 U.S.C. § 103(a) as

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being unpatentable over Farag in view of <http://en.wikipedia.org/wiki/Food> ("Food"), http://web.archive.org/web/*/http://www.peteducation.com/article.cfm?cls=1&cat=1399&articleid=2705 ("2705") and <http://dictionary.reference.com/search?q=companion&r=66> ("66"). Applicants respectfully traverse this rejection.

Farag is directed to "[a] bland food supplement which can be used as a filler, extender, or protein binder in a variety of food products is made from water-extracted vegetable pulp such as sugar beet pulp." *Abstract*. Food is directed to a definition of food as provided on Wikipedia.org and states "[f]ood is any substance that can be consumed, including liquid drinks. Food is the main source of energy and of nutrition for animals, and is usually of animal or plant origin." 2705 is directed to "Beet Pulp: Its Benefit in Pet Food." 66 is directed to a definition of companion as provided on dictionary.reference.com and states "companion a. A person who accompanies or associates with another; a comrade. b. A domestic partner. 2. A person employed to assist, live with, or travel with another. 3. One of a pair or set of things; a mate." The combination of Farag with Food, 2705 and 66, however, fails to render the claims of the current application obvious.

Farag, Food, 2705 and 66, either alone or in combination, fail to teach a liquid composition adapted for use by a companion animal. The claims of the current application state that "the composition is a liquid..." The specification defines "liquid" as follows:

The compositions herein are liquids; as used herein, the term "liquid" is as will be commonly understood in the art, with the understanding that the composition may contain solid particulates or other solid matter while still maintaining the overall liquid character of the compositions. Liquids are typically flowable at ambient temperature.

Page 7, lines 1 – 5. The composition of Farag is dry and quickly swells in hot or cold aqueous systems, thereby creating a filling and thickening material. Col. 1, lines 54 – 62. The Office states that "it would have been obvious...to modify the form of the composition taught by Farag...because...the composition taught by Farag could be used in gravies, soups, sauces, dips and batters as well as imitation fruit drinks." Farag merely teaches that such a composition is used as a "filling material" useable in such food

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products. Col. 3, lines 42 – 49. Farag, however, does not teach that the composition may be provided as a liquid composition itself nor does Farag provide any reasonable expectation of success in modifying the composition from a dry form to a liquid form. Farag, Food, 2705 and 66, either alone or in combination, fail to provide for a liquid composition adapted for use by a companion animal. As noted, Farag fails to provide a liquid composition. While the definition of “food” includes liquid drinks, it does not necessarily follow that the composition of Farag may be modified from dry form to a liquid form. Thus, Farag, Food, 2705 and 66, either alone or in combination, fail to provide a reasonable expectation of success in modifying the composition of Farag in order to arrive at the claimed composition. Applicants respectfully request reconsideration and withdrawal of the rejection.

Furthermore, as defined by the current application, “‘companion animal’ means a domestic animal. Preferably, ‘companion animal’ means a domestic dog, cat, rabbit, ferret, horse, cow, or the like.” Page 3, lines 15 – 16. Additionally, the written description provides that a consumer includes “companion animal guardian, breeder, veterinarian, or the like” and the consumer “will readily comprehend benefits of the present composition.” Page 10, lines 19 – 21. The specification also provides that “the term ‘orally administering’ with respect to the companion animal means that the animal ingests or a human is directed to feed, or does feed, the animal one or more compositions herein.” Page 11, lines 31 – 33. Non-limiting examples have, therefore, been provided as to the roles humans may play in the lives of companion animals. As such, it would be inconsistent with the specification to extend the definition of a “companion animal” to include a human. Farag, Food, 2705 and 66, either alone or in combination, fail to teach a composition adapted for use by a companion animal. Furthermore, the references cited by the Office, either alone or in combination, fail to provide any expectation of success for the use of a composition in a companion animal. Applicants respectfully request reconsideration and withdrawal of the rejection.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In

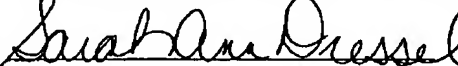
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view of the foregoing, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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